

§ 531.5

29 CFR Ch. V (7–1–10 Edition)

§ 531.5 Making determinations of “fair value.”

(a) *Procedure.* The procedures governing the making of determinations of the “fair value” of board, lodging, or other facilities for defined classes of employees and in defined areas under section 3(m) of the Act shall be the same as that prescribed in § 531.4 with respect to determinations of “reasonable cost.”

(b) *Petitions of interested persons.* Any petition by an employee or an authorized representative of employees, an employer or group of employers, or other interested persons for a determination of “fair value” under section 3(m) of the Act shall contain the information required under paragraph (b) of § 531.4, and in addition, to the extent possible, the following:

(1) A proposed definition of the class or classes of employees involved;

(2) A proposed definition of the area to which any requested determination would apply;

(3) Any measure of “fair value” of the furnished facilities which may be appropriate in addition to the cost of such facilities.

§ 531.6 Effects of collective bargaining agreements.

(a) The cost of board, lodging, or other facilities shall not be included as part of the wage paid to any employee to the extent it is excluded therefrom under the terms of a bona fide collective bargaining agreement applicable to the particular employee.

(b) A collective bargaining agreement shall be deemed to be “bona fide” when it is made with a labor organization which has been certified pursuant to the provision of section 7(b)(1) or 7(b)(2) of the Act by the National Labor Relations Board, or which is the certified representative of the employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended.

(c) Collective bargaining agreements made with representatives who have not been so certified will be ruled on individually upon submission to the Administrator.

§ 531.7 Request for review of tip credit.

(a) Any employee (either himself or acting through his representative) may request the Administrator to determine whether the actual amount of tips received by him is less than the amount determined by the employer as a wage credit. If it is shown to the satisfaction of the Administrator that the actual amount of tips is the lesser of these amounts, the amount paid the employee by the employer shall be deemed to have been increased by such lesser amount.

(b) Requests for review and determination may be made either orally or in writing to any investigator or any regional, district, or field office of the Wage and Hour Division or to the Administrator in Washington, DC 20210. Requests should be accompanied by a statement of tips received each week or each month over a representative period as reported by the employee to the employer for purposes of Internal Revenue Service reports. Such a request should also be accompanied by a statement showing the tip credit taken by the employer and any other information deemed pertinent by the petitioner. In any instance in which it appears that the tip credit claimed by the employer exceeds the amount of tips actually received by the tipped employee, the employer shall be apprised of the facts made available to the Wage and Hour Division and be afforded the opportunity to submit any evidence he may care to present in support of his claim for tip credit before a determination is made. Such determination shall be made by the official representative of the Wage and Hour Division assigned to make an investigation of the employing establishment.

Subpart C—Interpretations

§ 531.25 Introductory statement.

(a) The ultimate decisions on interpretations of the Act are made by the courts (*Mitchell v. Zachry*, 362 U.S. 310; *Kirschbaum v. Walling*, 316 U.S. 517). Court decisions supporting interpretations contained in this subpart are cited where it is believed they may be helpful. On matters which have not been determined by the courts, it is